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In the Supreme Court of the United States

OCTOBER TERM, 1957

GERALD VOGLINO AND P. RUSSELL WILLETT,
Petitioners

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

MALCOLM ANDERSON,
Assistant Attorney General,

BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys,
Department of Justice,
Washington 25, D. C.

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CITATIONS

CASE:

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26 U.S.C. 4901 ..... 2, 4, 5

26 U.S.C. 7302 ..... 3, 5

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1a-2a) is not yet reported. The memorandum opinion of the District Court for the District of Maryland (Pet. App. 3a-6a) is reported at 154 F. Supp. 731.

JURISDICTION

The judgment of the Court of Appeals was entered on April 1, 1958. The petition for a writ of certiorari

was filed on May 1, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances presented, certain gambling machines were subject to civil forfeiture because of the failure of the proprietor of the premises to pay the special occupation tax imposed upon one who maintains such machines for use.

STATUTES INVOLVED

26 U.S.C. 4461 provides in part:

Imposition of tax

There shall be imposed a special tax to be paid by every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device at the following rates:

* * *

(2) $250 a year, in the case of a device defined in paragraph (2) of section 4462(a); * * *

26 U.S.C. 4901 provides in part:

Payment of tax

(a) *Condition precedent to carrying on certain business.*—No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering), 4461(2), (coin-operated gaming devices), 4721 (narcotic drugs), or 4751 (marihuana) until he has paid the special tax therefor.

(b) *Computation.*—All special taxes shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which

such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) *How paid.*—

(1) *Stamp.*—All special taxes imposed by law shall be paid by stamps denoting the tax.

* * *

26 U.S.C. 7302 provides in part:

Property used in violation of internal revenue laws

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. * * *

STATEMENT

Petitioners seek review of the judgment of the Court of Appeals affirming the judgment of the District Court (Pet. App. 6a-7a), forfeiting, pursuant to 26 U.S.C. 7302 (*supra*), five coin-operated gaming devices and contents ($63.75), which were seized from an establishment whose sole proprietor and occupant at the time was petitioner Willett.

The facts established at the trial were, for purposes of appeal, agreed on by the parties and are set forth in the petition (Pet. 3-6). In brief, they show that on

or before July 1, 1955, Voglino owned the premises known as Curley's Restaurant and purchased a tax stamp for each of the five machines. Voglino's permit would have expired on June 30, 1956.

On May 1, 1956, Willett purchased the business from Voglino conditioned upon the receipt of a Charles County liquor license which he received on June 12, 1956. From that day he became the operator of the business in which the five machines were used. He did not purchase stamps for those machines or for three others on the premises.

On June 18, 1956 (*i.e.*, after Willett became sole proprietor), Voglino purchased stamps for the five machines for the period from July 1, 1956 to June 30, 1957, and Willett purchased three stamps for the three other machines for the same period. Under the laws of Charles County, Maryland, a license for no more than three machines may be issued to any one person, unless such person held a license for more than three machines on January 1, 1951. On January 1, 1951, Voglino had held a license for five machines.

The machines were seized on June 28, 1956, on the ground that Willett, the proprietor of the premises, had not paid the tax required of "every person who maintains for use or permits the use of, on any place or premises occupied by him, a coin-operated amusement or gaming device," pursuant to 26 U.S.C 4461, and 4901 (*supra*, pp. 2-3).

ARGUMENT

It is conceded that Willett, the proprietor, had an obligation, explicitly set forth in 26 U.S.C. 4461 and 26 U.S.C. 4901 (*supra*, pp. 2-3), to pay a special occupation tax in order to maintain on his premises the gam-

ing devices which have now been forfeited. It is also undisputed that he did not pay a tax for the period of his proprietorship in June of 1956. It is said, however, that the District Court did not find a purpose of tax evasion (though it did express doubt of petitioners' "good intentions," Pet. 5 a).

We believe that the gambling devices could be forfeited without an express finding of a purpose to evade tax. Section 7302 (*supra*, p. 3) provides that it "shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenues laws * * * or which has been so used". The court below properly interpreted that language when it stated that the requisite intent "is that the gaming devices be used in the business subject to tax upon which the tax has not been paid" (Pet. 2 a). The remedy of civil forfeiture is "preventative and remedial" and does not depend upon a finding of criminality. See *United States* v. *Dixon*, 347 U.S. 381, 382, note 1. Moreover, the devices here forfeited were not only intended or designed for use in the business subject to tax; it appears that they had been used in that business (see Pet. 4) and that accordingly the second phrase of the above-quoted forfeiture provision ("or which has been so used") is also applicable.

In any event, we submit, this case is hardly an appropriate vehicle for determining whether proof of a specific purpose to evade tax is to be deemed a prerequisite to forfeiture. The case is intrinsically unimportant and there is no conflict of decision. In addition, there is no reason for supposing that Willett was unfamiliar with the fact that he could not lawfully carry on the gaming activity "until he ha[d] paid the special tax therefor" (Section 4901(a), *supra*, p. 2). Familiarity

with the statutory requirements is shown by the fact that on June 18, 1956, he made an application for stamps (for three of eight machines located on the premises) for the succeeding tax year.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

MALCOLM ANDERSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

MAY 1958.

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